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February 21, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Meeting in CC Docket No. 00-175

Dear Mr. Caton:

On February 20, 2002, David W. Zesiger, Executive Director of the Independent Telephone and Telecommunications Alliance (ITTA), Anne Rush of ITTA, Donn T. Wonnell, counsel for ITTA, and the undersigned met with Jim Lande, Thomas J. Navin, Claudia Pabo, Brad Koerner, and Pam Megna of the Commission staff regarding the above-referenced proceeding.

In the meeting, ITTA reiterated its position that the Commission should immediately eliminate its rule requiring independent incumbent local exchange carriers to provide interexchange services through a separate corporate affiliate. We also distributed and discussed the attached materials containing ITTA's responses to specific Commission questions.

In accordance with Commission rules, I am filing two copies of this letter. Please contact me if you have any questions at (202) 637-2225.

Very truly yours,

Richard Cameron

Richard R. Cameron
of LATHAM & WATKINS

cc: Thomas J. Navin
Claudia Pabo
Brad Koerner
Pam Megna
Jim Lande

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<u>Independent Telephone and Telecommunications Alliance</u>
Responses to FCC Questions on LEC-IX Separate Affiliate Rules (February 20, 2002)

<u>Summary:</u>

- <u>The LEC-IX Separate Affiliate Rules discourage facilities-based competition</u>. By prohibiting joint ownership of facilities, the LEC-IX separate affiliate rules prevent the independent ILECs from providing interexchange services efficiently and in accordance with the dictates of market forces.
- <u>The LEC-IX separate affiliate rules are not based on any demonstrated regulatory need</u>. Independent ILECs provided local and interexchange services on an integrated basis for decades with no evidence of systematic discrimination against unaffiliated carriers.
- <u>Section 272 separations rules apply only to BOCs, and sunset 3 years after interLATA entry</u>. Other competitive activities (information services, CMRS) are permitted on an unseparated basis – and existing Part 64 rules adequately address cost allocation.
- <u>Legislation now pending in Congress would eliminate all separate affiliate requirements</u>. H.R. 496 passed the House March 21, 2001, and S. 1359 is pending in the Senate.

<u>Specific Questions:</u>

1. What interexchange facilities do the independent ILEC interexchange corporate subsidiaries currently own? (Diagrams would be helpful.) Absent the requirement for a separate corporate subsidiary, what equipment would independent ILECs own jointly with their IX operations? (Again, diagrams would be helpful.) How would this equipment be used by their IX operations? How would it be made available to IX competitors? What alternatives, if any, would competing IX providers have to use these facilities?

<u>Facilities:</u>

- Currently, independent ILEC-affiliated interexchange carriers own both switching and transmission facilities. These facilities are primarily used for transport.
- ITTA members individually own various regional and sub-regional networks of fiber-optic trunks. (See attached maps.)
- Absent the Commission's separate affiliate rules, independent ILECs would be able either to own interexchange switching and transmission facilities and provide interexchange services on an integrated basis, or to own such switching and transmission facilities jointly with their IX affiliates.
- Since 1997, manufacturers have begun selling switches that perform both interexchange and local exchange switching functions. Such switches are considerably less costly than the combined price of separate local and interexchange switches. CLECs routinely use these switches. ILECs uniquely are barred from employing such equipment.

<u>Competitive Access:</u>

- Competitive markets, not federal regulations, govern IXCs in making *interexchange* facilities available to competitors. No additional federal regulation is needed.
- Competing interexchange carriers will be able to obtain *interstate access services* on the same basis as the ILEC's interexchange affiliate on a non-discriminatory basis. IXCs had no significant problems obtaining access to the local network on this basis before the separate affiliate rules took effect.

2. What benefits would flow from joint ownership of this equipment? Please give specific examples.

- Integrated operations or joint ownership of facilities would *lower costs of service* by:
  - Permitting an ILEC to purchase a *single switch* with dual local and interexchange capability, reducing the costs of providing both services;
  - Permitting joint ownership of transmission lines within the ILEC service territory, reducing the need to install *redundant* local and long-distance trunks; and
  - Eliminating the *costs* of maintaining a legally separate affiliate.
- By permitting independent ILECs to operate in this more efficient manner, the Commission would also encourage additional independent ILECs to initiate *facilities-based* interexchange service, just as AT&T, for example, is threatening to leave high-cost rural markets.
- Customers would benefit from the *added competition* in the local and interexchange markets -- pricing packages could compete with regional plans offered by CMRS carriers.

3. How would the cost of such jointly-owned equipment be allocated? How would these costs be recovered? (Part 64 Cost Allocation, Jurisdictional Separations, and Part 69 Access Charge rules.) How would cost recovery differ for average schedule companies, cost companies (both NECA pool and non-pool members), and price cap companies?

- Cost recovery for access charges *would not change*.
- Part 64 rules *already in place* would govern cost allocation.
  - The costs of jointly-owned or jointly-used facilities that are attributable to interexchange services would be allocated to non-regulated activity in the Part 64 cost allocation process, *for example,* by relative minutes of use.
- Part 69 interstate access charges would be *unaffected*, except to the extent that joint ownership or joint use of plant reduces overall costs of a rate-of-return regulated carrier.

4. Describe any inefficiencies or barriers to innovation due to use of a separate corporate subsidiary. Give specific examples. Describe the extra costs due to use of a separate corporate subsidiary. Quantify if possible.

- The prohibition on joint ownership of switching and transmission facilities, as discussed above, prevents efficient deployment of facilities using forward-thinking network design.
- This rule also inhibits innovative, competitive service offerings such as regional service packages comparable to those offered by CMRS carriers.
- For some carriers, the cost of separating facilities that were jointly owned prior to 1999 is also significant.
- While not large, the carrying costs of an additional corporate affiliate are often unnecessary.

5. Are there any reasons to treat the larger independent ILECs differently from the smaller independent ILECs? Explain.

- Prior to 1997, all non-BOCs were permitted to operate joint facilities under the Commission's rules (subject to dominant treatment of their IX services).
- No ILEC should be treated as dominant in its provision of IX services today.

  - Since 1997, the IX market has grown even more competitive, with CMRS and wireline carriers enjoying substantial growth in access and long-distance market shares.
  - Even the BOCs are treated as non-dominant when they enter the interLATA market, and their 272 separate affiliate restrictions sunset 3 years after they enter the market.
- The Communications Act distinguishes only between BOCs and non-BOCs.
- Relief for all independent ILECs is important. The independent ILECs are best positioned to bring additional facilities-based interexchange services to rural America.
- Smaller independent ILECs, which provide interexchange services more commonly through resale, received proportionately greater relief in 1999 when the Commission relaxed its separation ruled governing resale interexchange services.
- The larger independent ILECs are most in need of relief. These carriers are more likely to provide facilities-based service, and have greater resources to deploy additional interexchange facilities.

6. How many independent ILECs provide interexchange service? How many do so exclusively on a resale basis? How many use some of their own interexchange facilities?

- With over 1300 independent ILECs in the nation, exact numbers are difficult to generate
- As a general matter, the smallest independent ILECs today have little capability to offer facilities-based interexchange services.
- ITTA members provide interexchange services through a patchwork of owned and resold facilities.
- Eight ITTA members have significant transmission networks but these are largely LEC trunking facilities, artificially segregated from their interexchange business.

7. To what extent has local competition developed in areas served by independent ILECs? What CLECs serve these areas? What types of customers do they serve? How many lines do they provide? Do CLECs provide service through resale, UNEs, or over their own facilities?

- The level of local competition seems irrelevant to the separate affiliate rule.
- Prior to 1996, independent ILECs had legally-protected monopolies, yet were not subject to LEC-IX separation requirements.
- IXCs have complained bitterly about abusive access policies of CLECs, not ILECs.
- Competition in independent ILEC markets is emerging, and vigorous in some markets.
- Competitors include CMRS carriers, wireline CLECs, satellite, and cable television operators.
- The Commission has already found vigorous facilities-based competition in Anchorage for residential and business customers alike, with approximately 40% of customers subscribing to competitors. The primary competitor, GCI, now claims to serve 17 percent of all local exchange lines in the entire state, mostly using its own facilities.
- CMRS carriers are increasingly siphoning traffic off of the wireline network. Minute and line growth have stalled or turned negative in the past year.

- Access charge and universal service reform have made rural customers more attractive to competitors. Competitors are increasingly receiving ETC certifications.

8. If the Commission were to eliminate the separate corporate subsidiary requirement and rely more heavily on complaints and enforcement actions, are there clear standards concerning what constitutes discrimination? If not, could the Commission develop standards that would provide adequate guidance? What should these standards be? Would the Commission have adequate access to information necessary for the resolution of such complaints?

- There is no evidence that any such standards would be needed, and new requirements might be just as burdensome as the existing rule.
- The Commission has a long history enforcing the prohibition on unjust and unreasonable discrimination in Section 202(a). There is no need for additional standards.
- The Commission has adequate authority to obtain access to whatever data it needs to adjudicate complaints alleging discriminatory behavior. In addition to its investigative authority under Section 208, the Commission has broad authority to request information from carriers under sections 211, 213, 215, 218, and 220 of the Act.
- Performance benchmarks or standards to enforce the prohibition on unjust and unreasonable discrimination would serve no purpose, as the Act focuses on relative performance of the ILEC in serving unaffiliated IXCs, as compared to its own interexchange operations. Compliance with objective performance measurements is irrelevant to a discrimination complaint, and merely add an unnecessary new regulatory burden.

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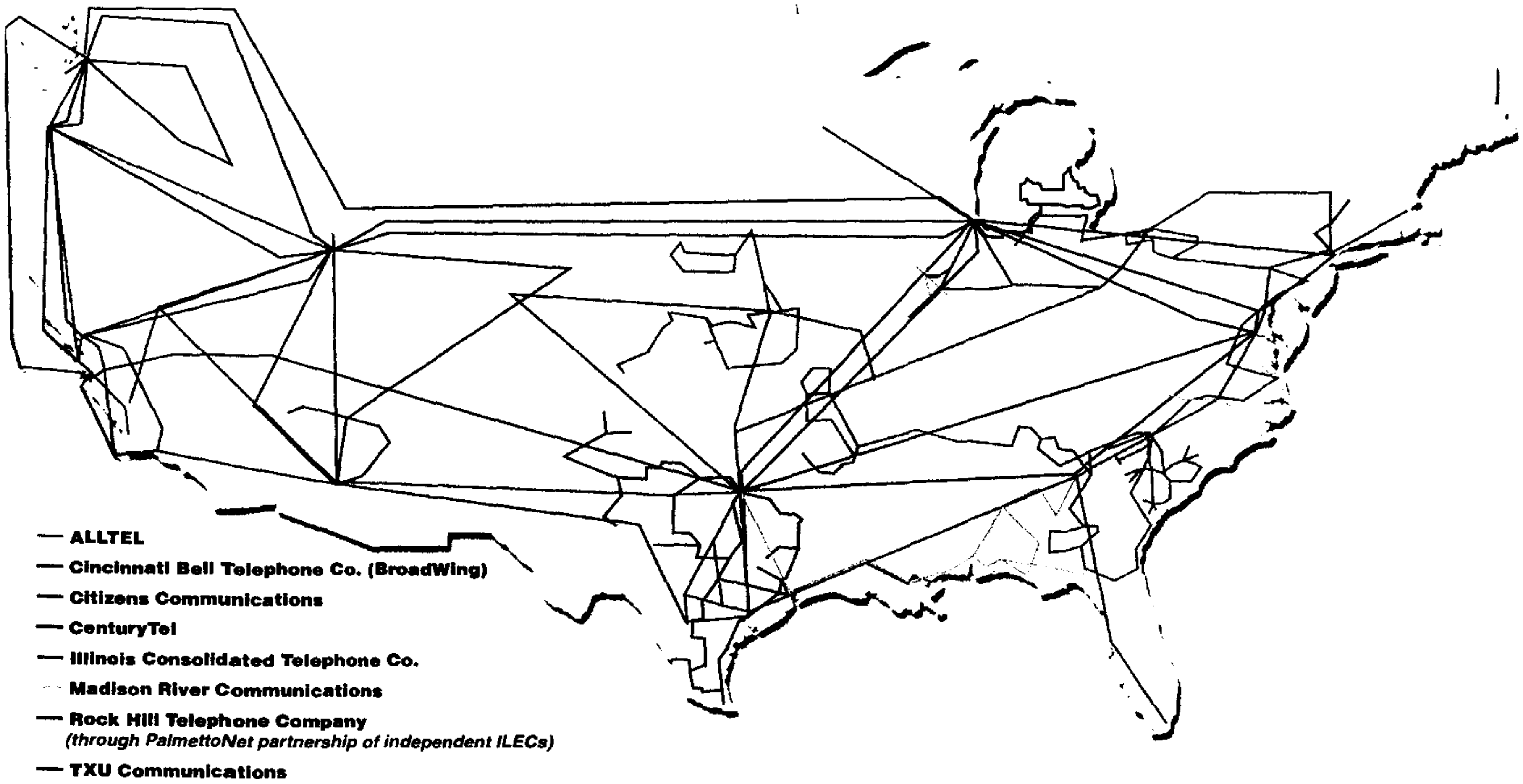
ITTA Member Long-Haul Fiber Facilities



ITTA Source: Member company information

Long Haul Network

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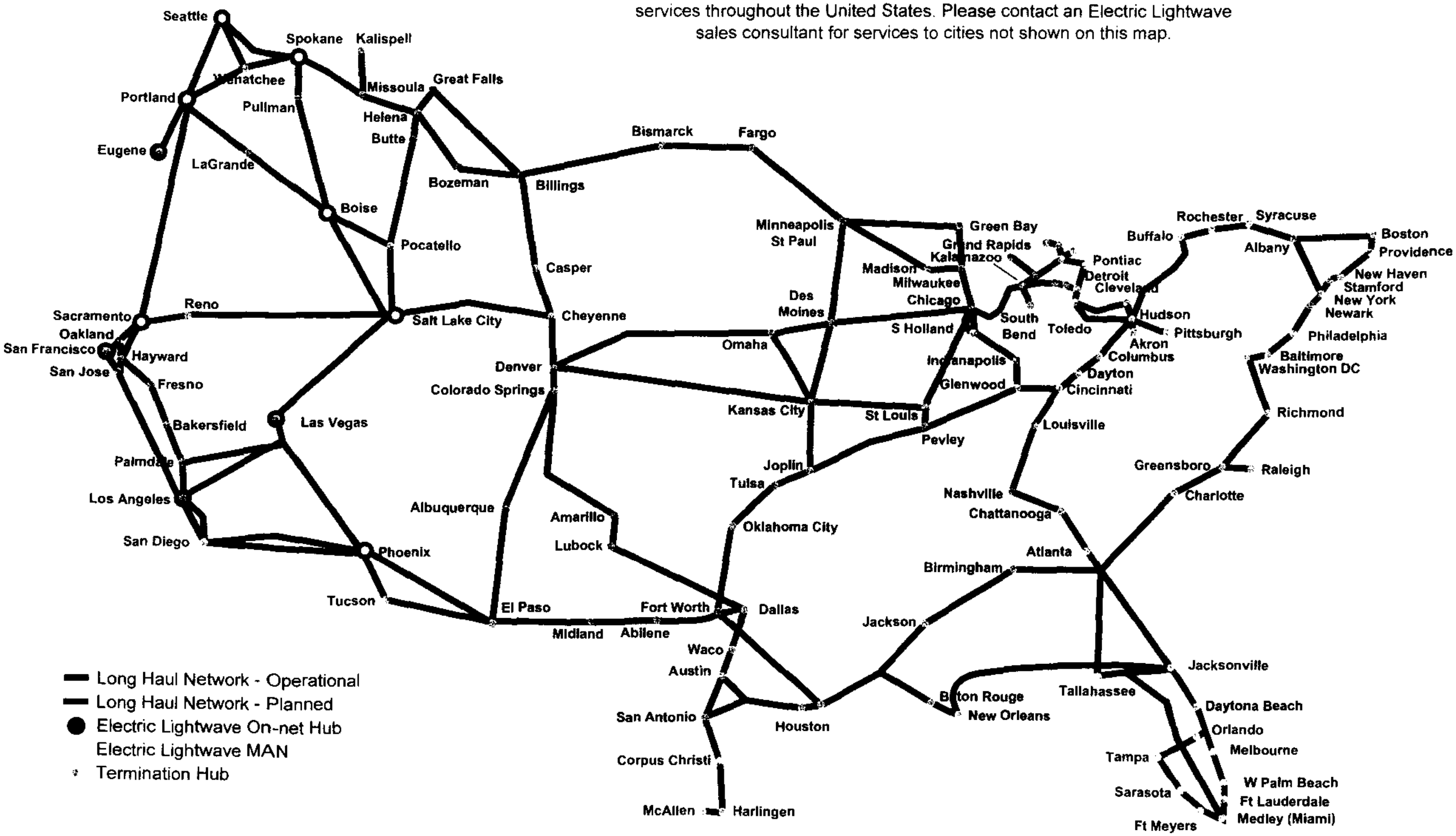
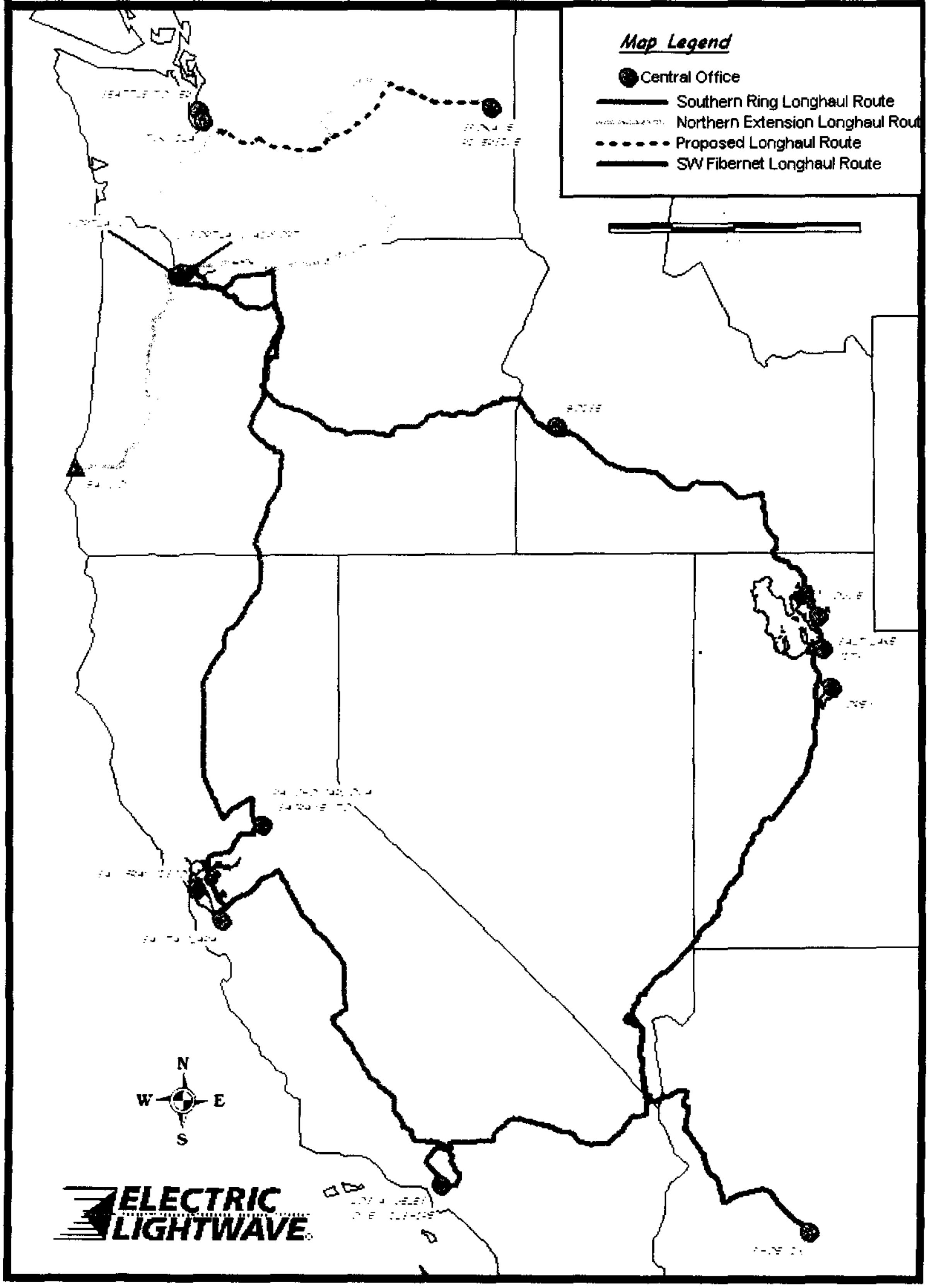
Electric Lightwave utilizes several partner networks to offer long haul services throughout the United States. Please contact an Electric Lightwave sales consultant for services to cities not shown on this map.



June 2001

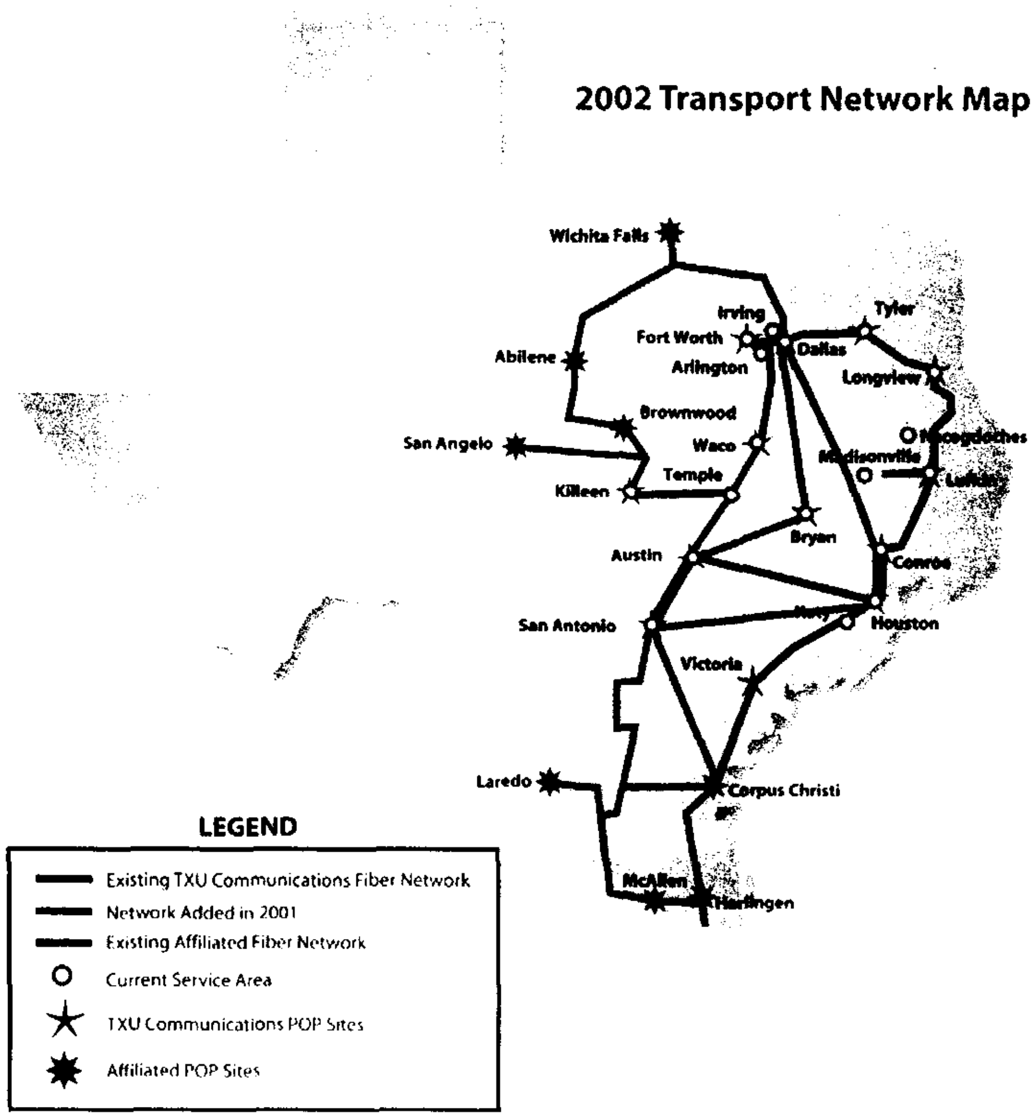
LONGHAUL NETWORK



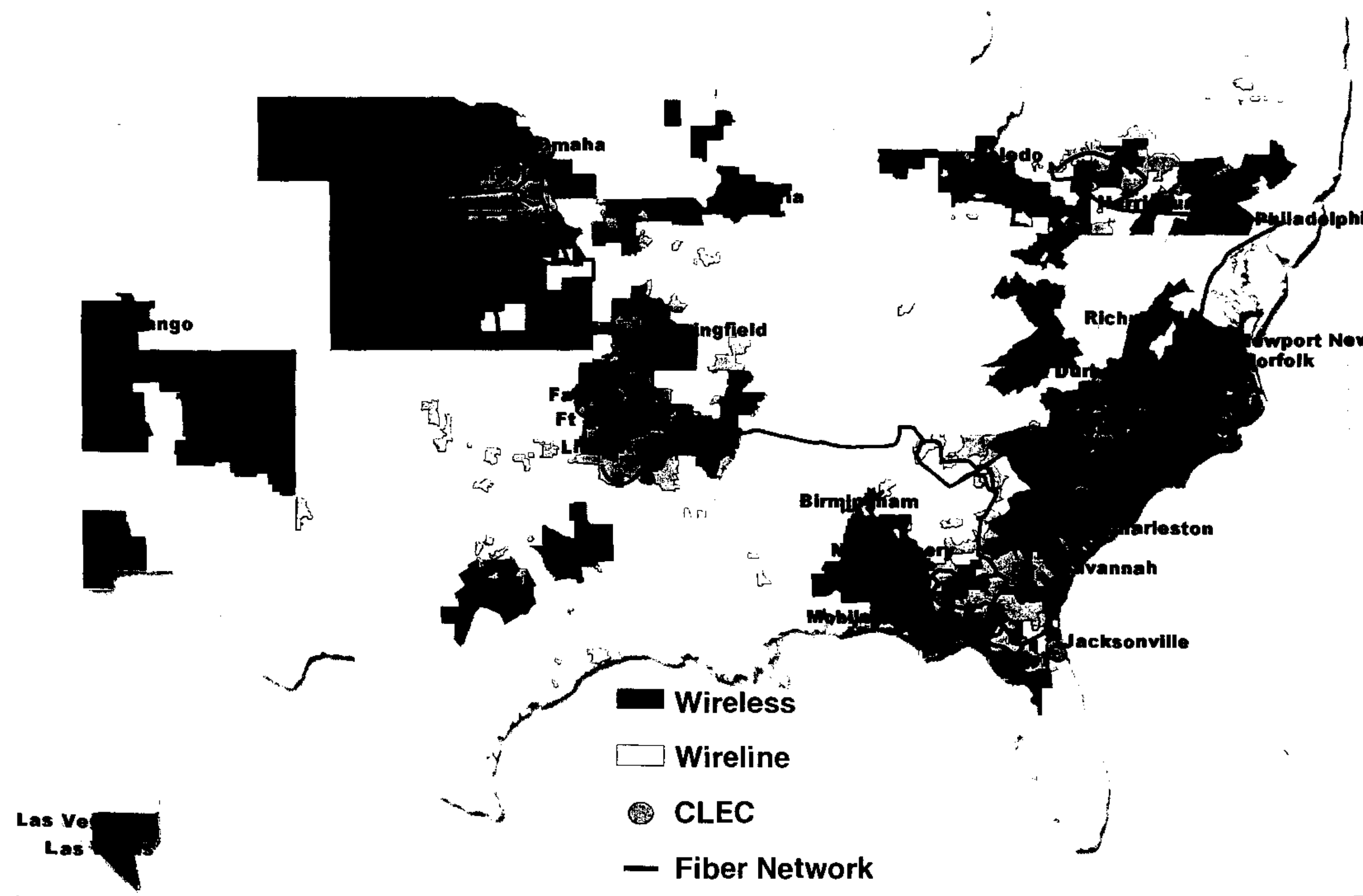
TXU

TXU Communications

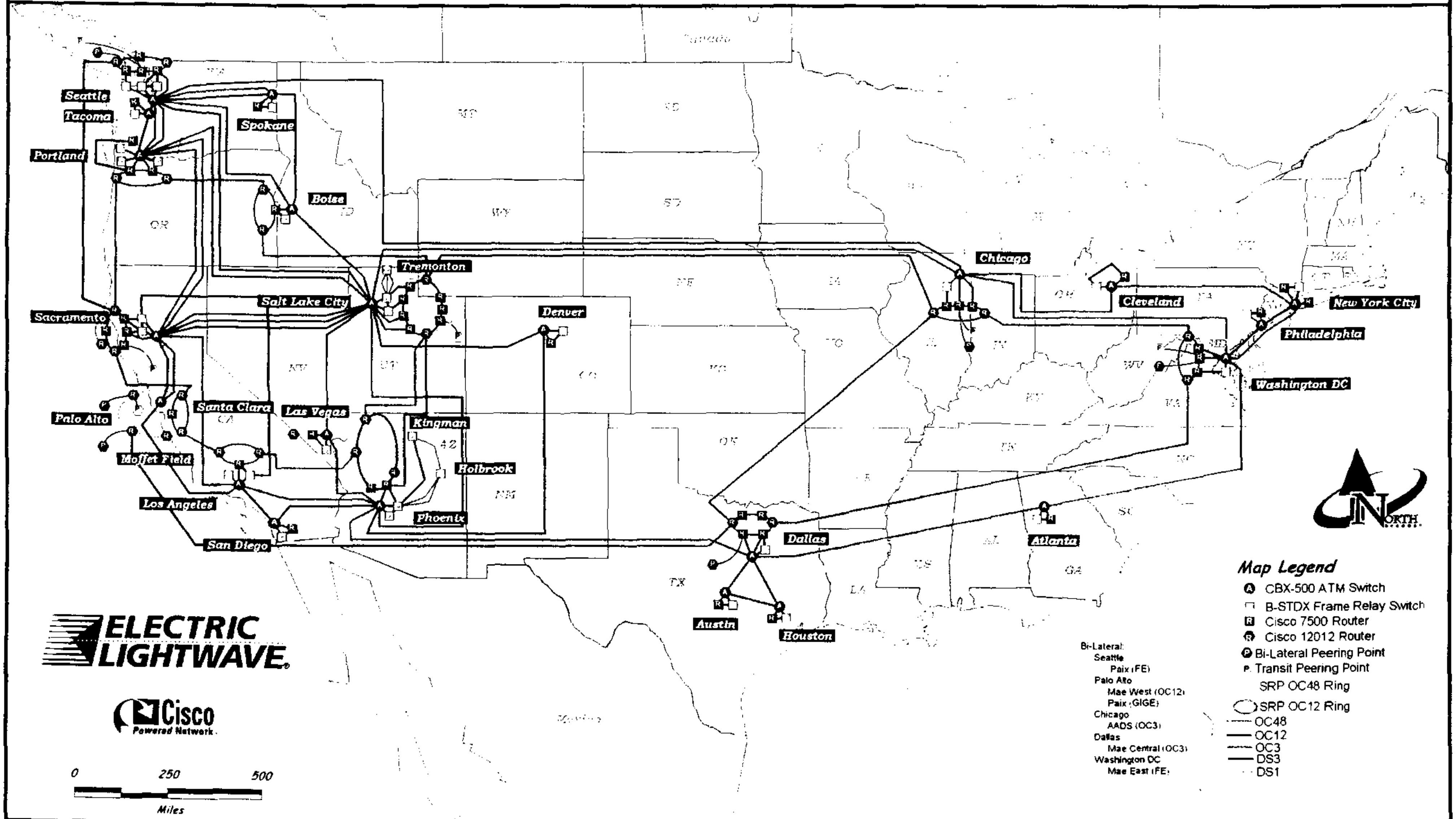
2002 Transport Network Map



Communications



IP DATA BACKBONE NETWORK



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October, 2001

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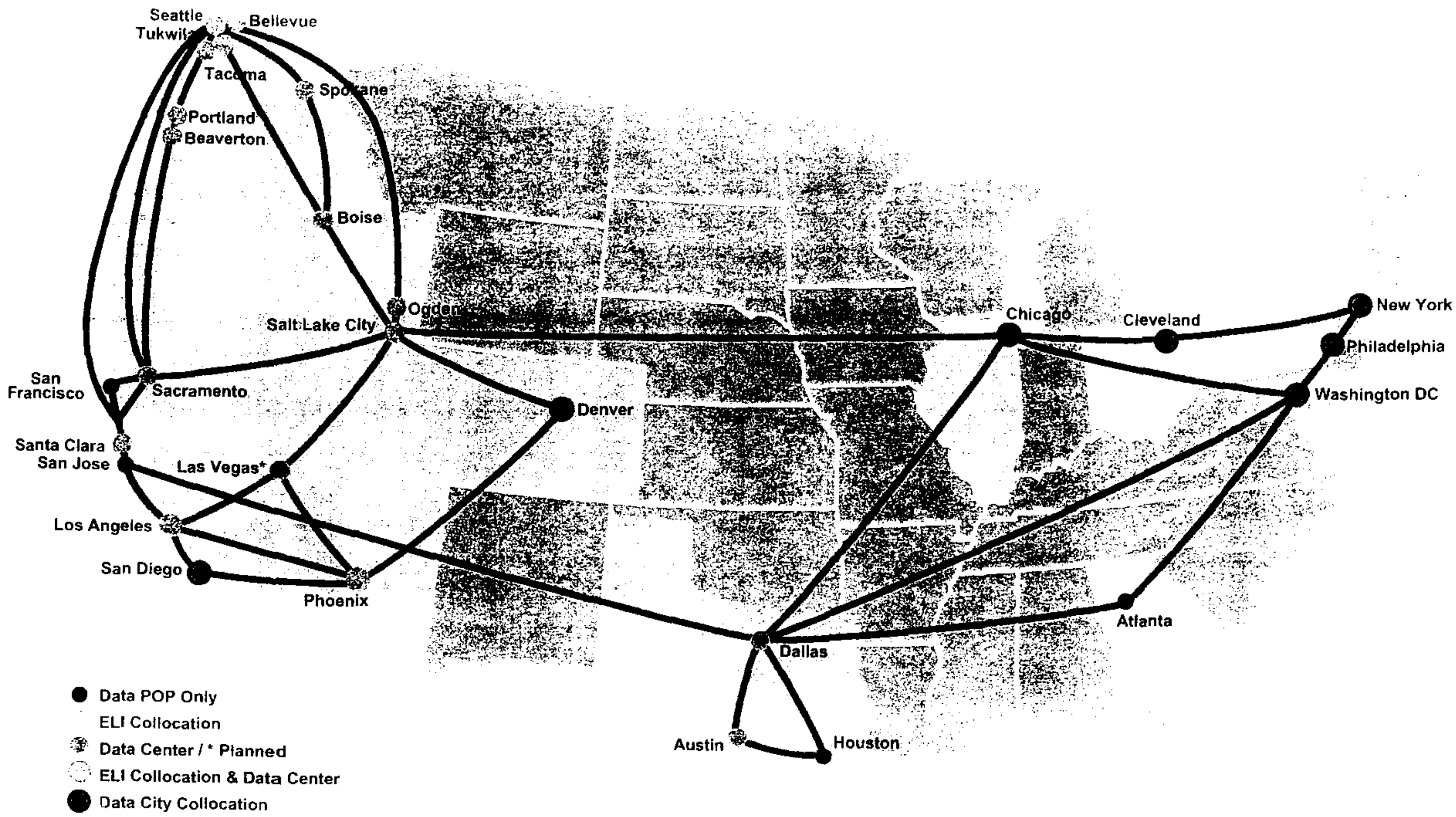

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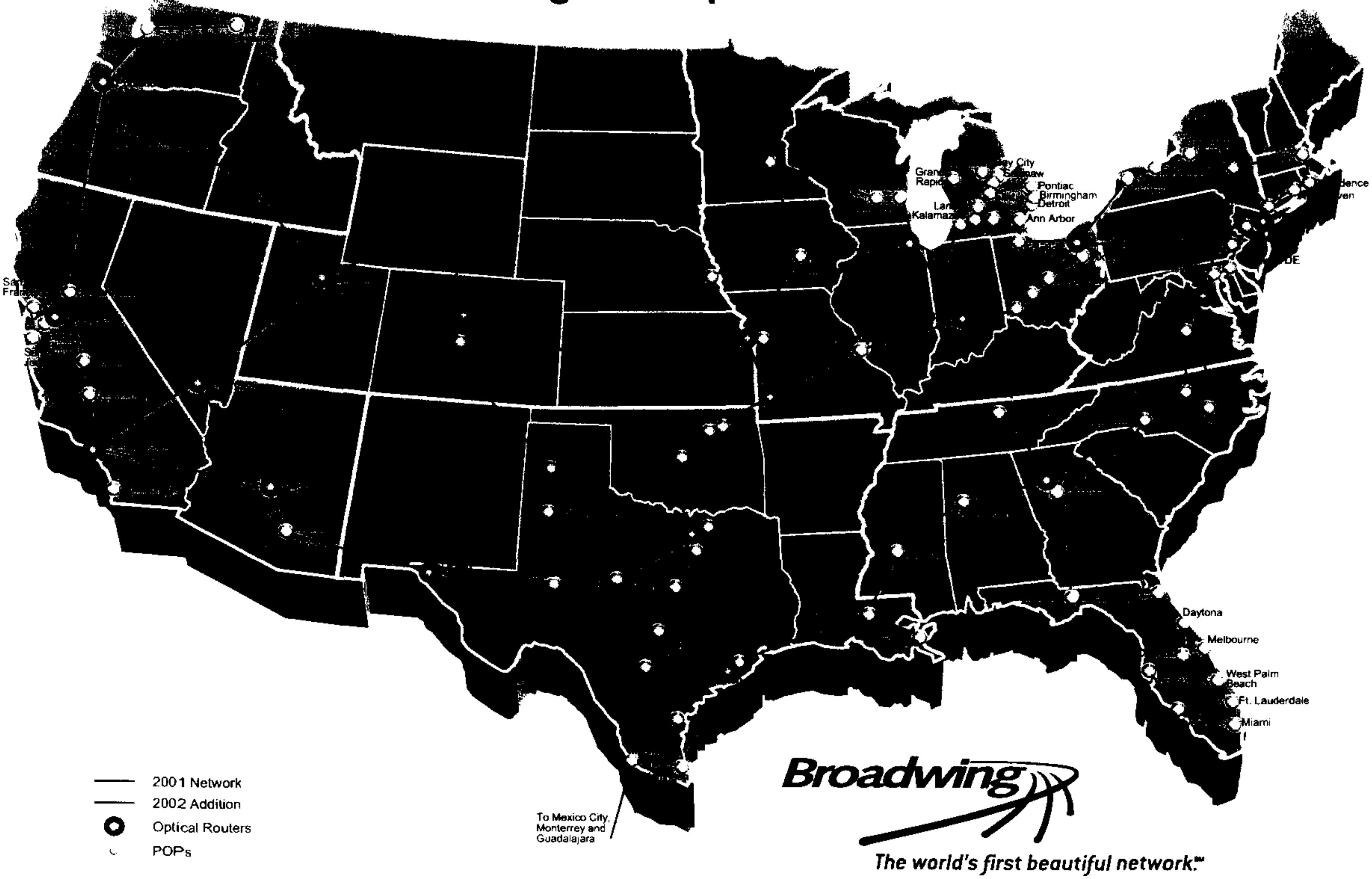
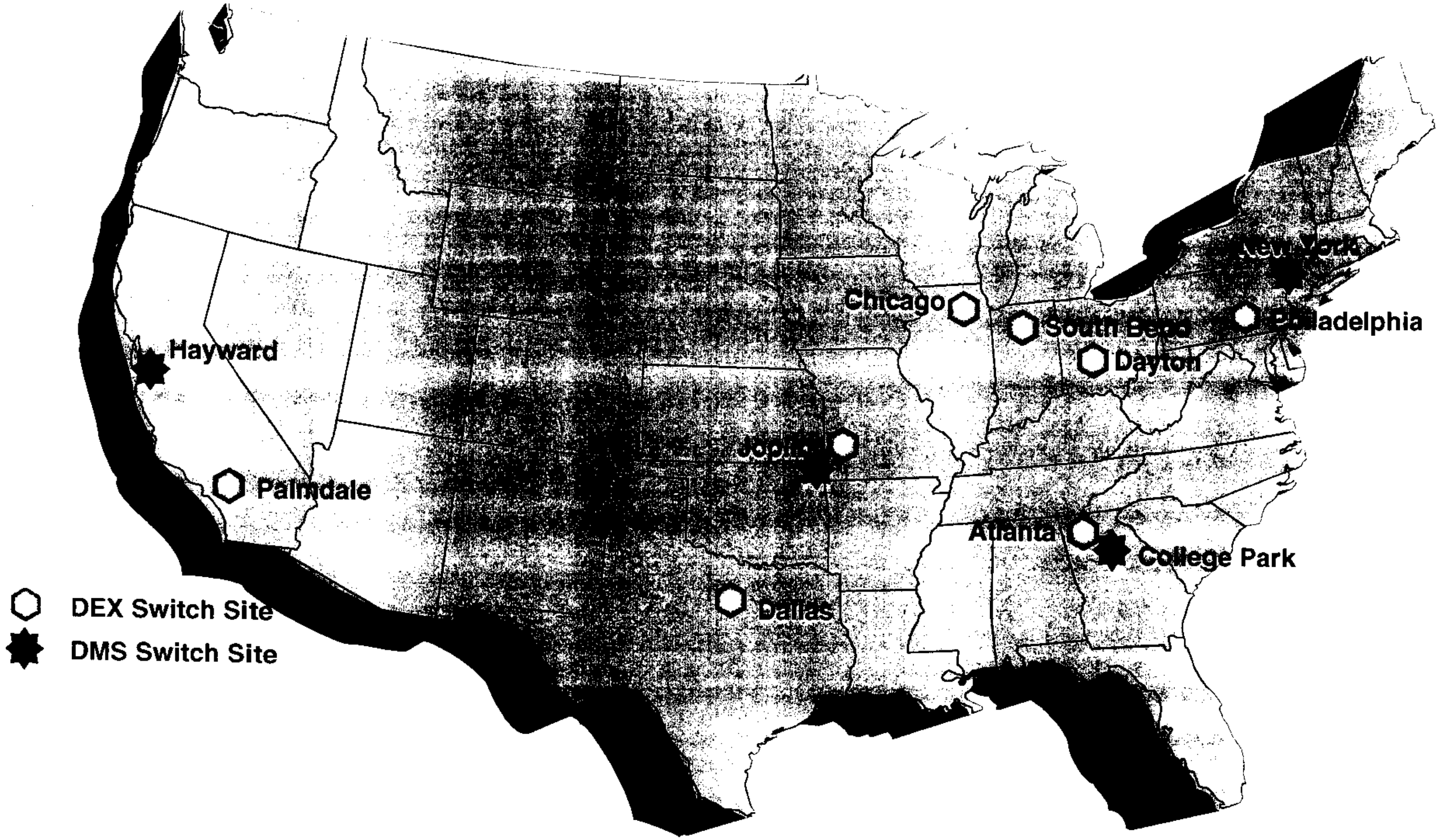
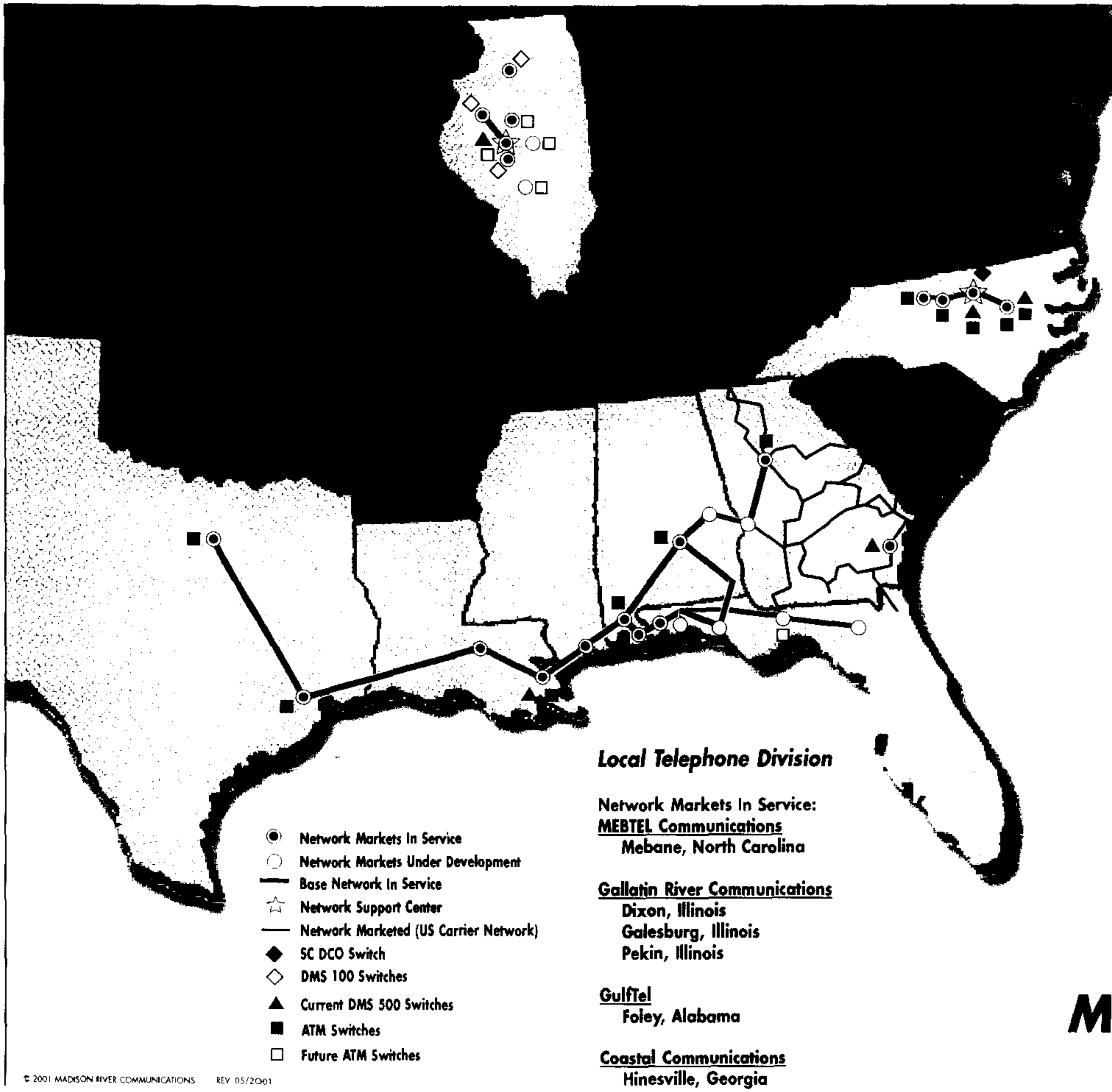
Broadwing's All-Optical Network



Broadwing Long Distance Voice Switches





Local Telephone Division

Network Markets In Service:

MEBTEL Communications
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Gallatin River Communications
Dixon, Illinois
Galesburg, Illinois
Pekin, Illinois

GulfTel
Foley, Alabama

Coastal Communications
Hinesville, Georgia

Integrated Communications Division

Network Markets In Service:

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- Montgomery

Florida
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Georgia
- Atlanta

Illinois
- Peoria

Louisiana
- Baton Rouge
- Lafayette
- New Orleans

Mississippi
- Biloxi

North Carolina
- Chapel Hill
- Durham
- Greensboro
- Raleigh
- Research Triangle Park
- Winston-Salem

Texas
- Dallas
- Houston

Network Markets Under Development:

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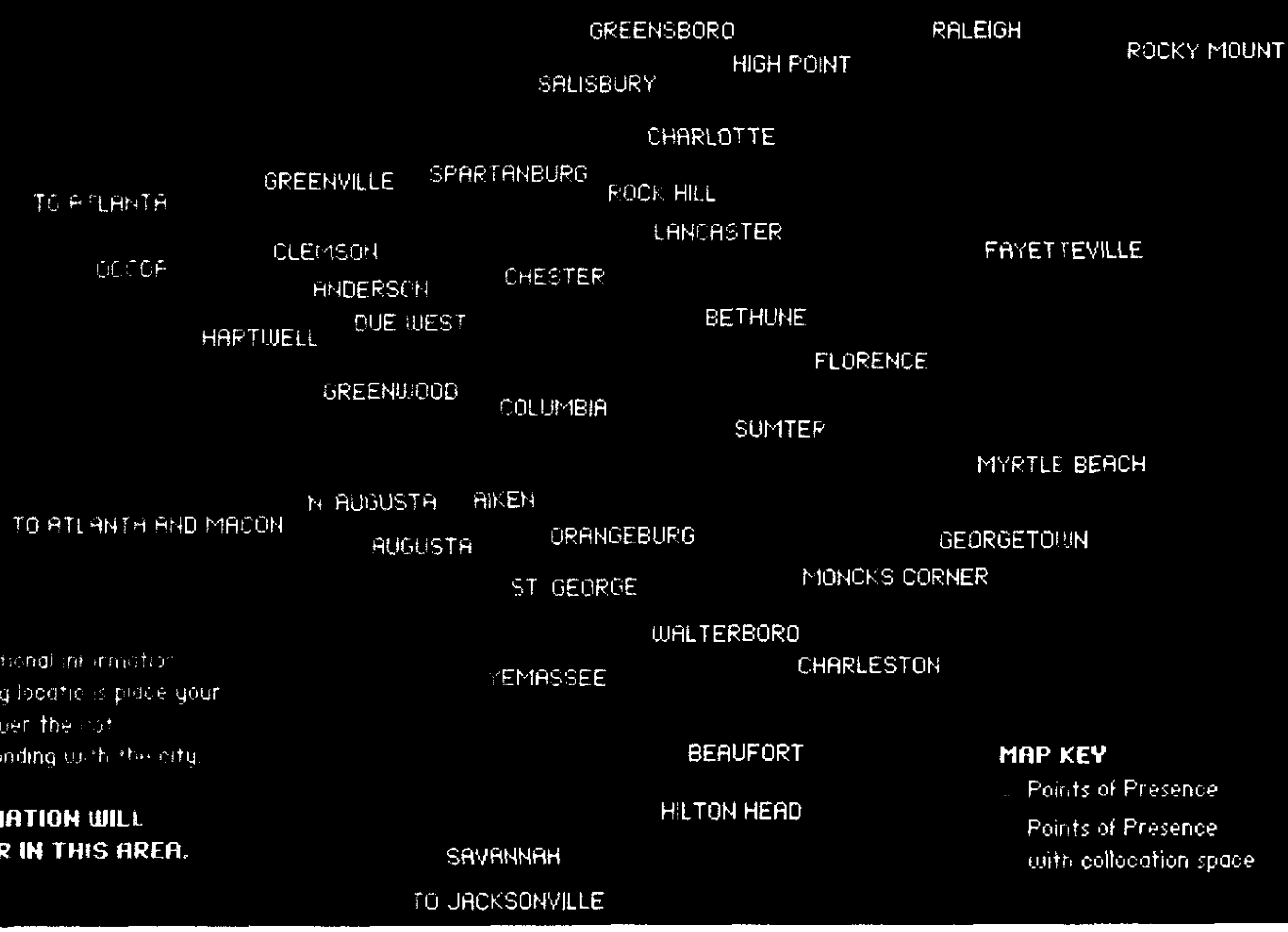

For additional information regarding locations place your cursor over the dot corresponding with the city.

INFORMATION WILL APPEAR IN THIS AREA.

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(307) 362-4095
FAX (307) 362-4097

February 14, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell:

I am writing with regard to the attached document, entitled "Possible Questions for Independent ILECs and Independent ILEC Associations," disseminated by fax recently from the Commission. I'm concerned that the Commission is squandering valuable time seeking information from companies who haven't the resources to adequately respond before adopting a simple deregulatory measure such as removing the separate affiliate requirement on independent ILECs.

As you know, I authored the Independent Telecommunications Consumer Enhancement Act of 2001, H.R. 496, which passed the House of Representatives by voice vote. The legislation included very clear language that would prohibit the Commission from requiring such requirements on the Independent ILECs. The Commission itself seemed to be, finally, moving in the right direction by issuing a Notice of Proposed Rulemaking last fall and taking comments for the record.

I applaud your statement from a 1999 separate opinion, "I must respectfully dissent...from the continued application of separate affiliate requirements for the provision of in-region interexchange service...by mid-sized LECs." Pursuant to Section 271 (f)(1) of the 1996 Telecom Act, the separate affiliate requirement for the Bell Operating Companies will sunset three years after entry into their respective long distance markets. Thus, ten months from now, Verizon's New York operating company will no longer face this requirement. Yet the smallest telephone companies in New York and around the country could bear this burden in perpetuity if they fail to pass the attached "Possible Questions" exam.

This questionnaire asks the companies to produce a quantum of evidence supporting elimination of the separate affiliate requirement. The Independent ILECs should not be held hostage to such unnecessary information accumulation. In the Internet age, neither the companies nor the FCC can afford the delay and expense this type of inquiry creates.

In the future, I'm hopeful and, indeed, confident that you and your staff will move swiftly and efficiently to eliminate unnecessary regulations such as the separate affiliate requirement for independent ILECs. I also would appreciate your leadership to ensure that inquiries such as this which consume enormous time and resource from smaller companies occur only in the rarest of circumstances. Thank you for your attention to this matter.

Sincerely,

Barbara Cubin

Member of Congress

attachment

POSSIBLE QUESTIONS FOR INDEPENDENT ILECs AND INDEPENDENT ILEC ASSOCIATIONS CC DOCKET NO. 00-175

(These questions are designed to provide the Commission staff with relevant background information. They are also intended to fill out the existing record in a way that will assist the Commission in making the best possible decision and preparing an order that will successfully withstand court review.)

1. What interexchange facilities do the independent ILEC interexchange corporate subsidiaries currently own? (Diagrams would be helpful.) Absent the requirement for a separate corporate subsidiary, what equipment would independent ILECs own jointly with their IX operations? (Again, diagrams would be helpful.) How would this equipment be used by their IX operations? How would it be made available to IX competitors? What alternatives, if any, would competing IX providers have to the use of these facilities?

2. What benefits would flow from joint ownership of this equipment? Please give specific examples.

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